IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-090579 C-090580
Plaintiff-Appellee,	:	TRIAL NOS. B-0708345 B-0900543
vs.	:	
SHANE ASHBROOK,	:	*JUDGMENT ENTRY.*
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

In the case numbered B-0900543, defendant-appellant, Shane Ashbrook, entered guilty pleas to failing to stop after an accident, in violation of R.C. 4549.02, and to three counts of vehicular assault in violation of R.C. 2903.08(A)(2)(b). The trial court sentenced Ashbrook to one year in prison for the failure-to-stop conviction and to five years in prison for each of the vehicular-assault convictions. The court ordered the terms to be served consecutively. In addition, in the case numbered B-0708345, the court revoked Ashbrook's community-control sanction and imposed a four-year prison term that was made consecutive to his other four prison terms.

Ashbrook now appeals. We find no merit in his assignments of error, and we affirm his convictions.

In his first assignment of error, Ashbrook argues that the trial court erred in failing to merge the vehicular-assault offenses. He contends that the offenses were part of a single transaction that was committed with the same animus, and that they

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

were, therefore, allied offenses of similar import. We disagree. Because Ashbrook committed the same offense against three separate victims, a separate animus existed for each offense.[2] Accordingly, the trial court properly sentenced Ashbrook on the three counts of vehicular assault. We overrule the first assignment of error.

In his second assignment of error, Ashbrook argues that his aggregate 20-year prison sentence constitutes cruel and unusual punishment. He contends that because he entered guilty pleas and demonstrated remorse, the sentence is grossly disproportionate to the severity of the offenses.

Ashbrook's sentences were within the statutory range for each of his offenses, and they were not disproportionate to his offenses.[3] The trial court had evidence before it that Ashbrook had been driving 85 miles per hour in a residential area when he lost control of his car and crushed Kathleen Sias's car, causing devastating injuries to her and her two children. Ashbrook fled from the accident scene. In view of the facts of the offenses, Ashbrook's sentences are not so disproportionate to the offenses that they shock the sense of justice in the community.[4] We, therefore, overrule his second assignment of error.

In his third assignment of error, Ashbrook argues that the trial court abused its discretion in imposing maximum, consecutive sentences. He further claims that the trial court failed to consider the factors in R.C. 2929.11 and 2929.12, and that it failed to make certain findings to support the sentences.

But trial courts are no longer required to make findings or to give their reasons for imposing maximum, consecutive, or more than minimum sentences; instead, they have full discretion to impose a prison sentence within the statutory

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[2] See *State v. Baldwin*, 1st Dist. No. C-081237, 2009-Ohio-5348.
[3] *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68, 70, 203 N.E.2d 334; see, also, *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073, ¶14.
[4] *State v. Weitbreicht*, 86 Ohio St.3d 368, 1999-Ohio-113, 715 N.E.2d 167.

range for each offense.[5] When exercising that discretion, trial courts must still carefully consider the statutes that apply to every felony case, including R.C. 2929.11, R.C. 2929.12, and any statutes that are specific to the case itself.[6] However, there is no requirement that this be done on the record.[7]

In this case, Ashbrook's sentences fell within the available ranges and are not clearly and convincingly contrary to law, and the trial court did not abuse its discretion. Although the trial court did not specifically state that it had considered R.C. 2929.11 and 2929.12, we may presume that it did.[8] In light of the foregoing, we cannot conclude that Ashbrook's sentences are contrary to law. As a result, we overrule his third assignment of error.

In his fourth assignment of error, Ashbrook argues that he was denied the effective assistance of counsel. He contends that counsel should not have allowed him to plead guilty "as charged."

The two-part *Strickland v. Washington*[9] test applies to challenges to guilty pleas based on ineffective assistance of counsel.[10] First, the defendant must show that counsel's performance was deficient.[11] Second, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.[12]

Ashbrook cannot satisfy either prong of the *Strickland* test. The record does not support his contention that counsel's performance was deficient because he

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[5] *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraphs four and seven of syllabus.
[6] *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1.
[7] *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at fn. 4, citing *State v. Adams* (1988), 37 Ohio St.3d 295, 525 N.E.2d 1361, paragraph three of the syllabus; see, also, *State v. Esner*, 8th Dist. No. 90740, 2008-Ohio-6654, ¶10.
[8] *Kalish*, supra.
[9] (1984), 466 U.S. 668, 104 S.Ct. 2052.
[10] *Hill v. Lockhart* (1985), 474 U.S. 52, 58, 106 S.Ct. 366; *State v. Xie* (1992), 62 Ohio St.3d 521, 524, 584 N.E.2d 715.
[11] *Strickland*, supra, 466 U.S. at 687; *Hill*, supra, 474 U.S. at 57; *Xie*, supra, at 524.
[12] *Strickland*, supra, 466 U.S. at 687; *Hill*, supra, 474 U.S. at 59; *Xie*, supra, at 524.

pleaded guilty as charged. On the contrary, Ashbrook did not plead guilty to all of the charges in his indictment. The record reflects that, in exchange for his guilty pleas, the state dismissed a fourth vehicular-assault charge.

And given the compelling evidence of Ashbrook's guilt, any rational trier of fact "would have convicted him whatever his plea."[13] Consequently, Ashbrook has failed to establish the alleged deficiency in counsel's performance, or that, but for any deficiency, he would not have entered his guilty pleas.

Moreover, the record indicates that the trial court engaged in a complete Crim.R. 11(C) colloquy with Ashbrook. Ashbrook stated that he understood the rights he was waiving and the full consequences of his pleas. Consequently, his guilty pleas were valid. Because the record supports the conclusion that Ashbrook's pleas were knowingly and voluntarily made, and that counsel's performance was not deficient, we overrule the fourth assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., SUNDERMANN and **HENDON, JJ.**

To the Clerk:

Enter upon the Journal of the Court on April 21, 2010

per order of the Court _____.
Presiding Judge

[13] *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶90.